

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No.:

LEONEL MORALES,

Plaintiffs,

-against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, POLICE OFFICER WILLIAM CONCANNON
OF THE 46TH PRECINCT,

Defendants,

VERIFIED COMPLAINT

Plaintiff, by and through his attorney, Law Office of Andrew C. Laufer, PLLC complaining of the Defendants herein, upon information and belief, respectfully show to this Court, and allege as follows:

PRELIMINARY STATEMENT

1. That at all times hereinafter mentioned, the Plaintiff was a resident of the County of Bronx, City and State of New York.
2. That at all times hereinafter mentioned Defendant, THE CITY OF NEW YORK was and is a municipal corporation, duly organized and existing under by virtue of the laws of the State of New York.
3. That at all times hereinafter mentioned, NEW YORK CITY POLICE DEPARTMENT was and is a municipal corporation, duly organized and existing under by virtue of the laws of the State of New York.
4. That at all times hereinafter mentioned Defendants, POLICE OFFICER WILLIAM CONCANNON OF THE 46TH PRECINCT, was and still is employed with the NEW YORK CITY POLICE DEPARTMENT.
5. That prior to the institution of this action, a Notice of Claim was duly served upon and filed with the CITY OF NEW YORK on behalf of Plaintiff.

6. That a hearing was held on August 11, 2015 by the CITY OF NEW YORK pursuant to Municipal Law 50-h.

7. That at all time herein mentioned, POLICE OFFICER WILLIAM CONCANNON OF THE 46TH PRECINCT, was acting within the scope and course of his employment with the New York Police Department, and under color of State Law.

8. That at all times herein mentioned, POLICE OFFICER WILLIAM CONCANNON OF THE 46TH PRECINCT was acting in their individual and official capacity as employees of Defendants THE CITY OF NEW YORK (CITY) and NEW YORK CITY POLICE DEPARTMENT (NYPD).

9. That all the causes of action pleaded herein fall within one or more of the exceptions set forth in New York's Civil Practice Law & Rules 1602 with respect to joint and several liability.

STATEMENT OF FACTS AS TO ALL CAUSES OF ACTION

10. On or about March 20, 2015, at approximately 7:30 p.m., Plaintiff LEONEL MORALES was lawfully at the premises known as 2427 Webster Avenue, in the County of Bronx, State of New York.

11. Plaintiff and his family reside within apartment F9 at the aforementioned premises

12. At said time and plaintiff and at the request of his wife, left his apartment to purchase tomato sauce from a nearby bodega.

13. Plaintiff then utilized the stairway from his floor to the lobby while accompanied by his friend Felix Batista.

14. At the time he was about to enter the lobby, they were immediately approached and apprehended by two NYPD detectives while several uniform NYPD police officers observed.

15. The Plaintiff and Mr. Batista were questioned regarding a robbery which occurred at the premises.

16. The Defendants then had the robbery victim view the Plaintiff and Mr. Batista. She stated that they were not the perpetrators of the robbery.

17. The Defendants then released Mr. Batista but continued to detain the Plaintiff without his permission or consent.

18. The Defendants then took the Plaintiff to the 46th precinct and charged with crimes of which he was not guilty.

19. The Plaintiff was held at the 46th precinct until approximately 3 am when he was taken to central booking.

20. The Plaintiff was held for several more hours finally seeing a judge at 2:30p.m. the following day. He was then released on his own recognizance.

21. The Plaintiff was required to return to court on approximately three (3) more occasions. On or about May 6, 2015, all charges were dismissed against the Plaintiff.

22. The individual Defendant, WILLIAM CONCANNON OF THE 46TH PRECINCT, under color of state law, subjected Plaintiff to the foregoing acts and omissions without due process of the law, thereby depriving Plaintiff of his rights, privileges and immunities secured by the First, Fourth and Fourteenth Amendments to the United States Constitution, including without limitation, deprivation of the following constitutional rights: (a) freedom from unreasonable searches and seizure of his person, including the excessive use of force; (b) freedom from arrest without probable cause; (c) freedom from false imprisonment, meaning wrongful detention without good faith, reasonable suspicion or legal justification of which Plaintiff was aware and did not consent; (d) freedom from the lodging of false charges against

them by police; (e) freedom from abuse of process; and (f) the enjoyment of equal protection, privileges and immunities under the laws.

FIRST CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S RIGHT UNDER THE
FOURTH, FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES
CONSTITUTION AND NEW YORK STATE LAW PREDICATED UPON FALSE ARREST
AND IMPRISONMENT

23. Plaintiff repeats and realleges each and every allegation contained above as though set forth at length herein.

24. That on or about March 20, 2015, at approximately 7:30 p.m., THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, its agents, servants and employees, including but not limited to POLICE OFFICER WILLIAM CONCANNON OF THE 46TH PRECINCT, wrongfully and falsely arrested, imprisoned and detained Plaintiff without any right or justifiable grounds therefore.

25. That on or about March 20, 2015, at approximately 7:30 p.m., Defendant POLICE OFFICER WILLIAM CONCANNON OF THE 46TH PRECINCT, jointly and severally in his capacity as a police officer, wrongfully stopped, handcuffed, and seized the Plaintiff about his person, causing him physical pain and mental suffering. At no time did Defendants have legal cause to stop, handcuff, seize or touch Plaintiff, nor did Plaintiff consent to this illegal touching nor was or privileged by law.

26. That on or about March 20, 2015, Defendant CONCANNON, jointly and severally without any warrant, order or other legal process and without legal right, wrongfully and

unlawfully arrested Plaintiff, restrained him and his liberty and then took him into custody to the 46th Precinct.

27. Plaintiff was thereafter held at the 46th Precinct, for a total of approximately 7 hours until he was taken to central booking.

28. That the aforesaid arrest, detention and imprisonment continued at the 46th Precinct in Bronx, New York and elsewhere.

29. That the said arrest, detention and imprisonment was caused by the CITY, its agents, servants and employees, including but not limited to the Defendant police officer, without a warrant and without any reasonable cause or belief that Plaintiff was in fact guilty of any crime.

30. That the CITY, its agents, servants and employees, as set forth above, intended to confine Plaintiff; that Plaintiff was conscious of the confinement; that Plaintiff did not consent to the confinement; and that the confinement was not otherwise privileged.

31. As a result of the aforesaid actions, including the arrest and imprisonment of Plaintiff without probable cause, Defendant CONCANNON deprived Plaintiff of the rights, privileges and immunities secured by the Constitution and Laws of the United States of America and the Fourteenth Amendment.

32. As a result of the aforementioned actions, Defendant CONCANNON deprived Plaintiff of the right to be free from unreasonable search and seizures secured by the Constitution and Laws of the United States of America and the Fourth and Fourteenth Amendments.

33. As a result of the aforementioned actions, Defendants deprived Plaintiff of his right to liberty without due process of law secured by the Constitution and Laws of the United States of America and the Fifth and Fourteenth Amendments.

34. The aforementioned acts of Defendants were intentional, willful and malicious and performed with a reckless disregard for and deliberate indifference to Plaintiff's rights.

35. That by reason of the false arrest, imprisonment and detention of Plaintiff, Plaintiff was subjected to great indignities, humiliation and ridicule in being so detained, and was greatly injured in his credit and circumstances and was prevented and hindered from performing and transacting his necessary affairs and was caused to suffer much pain in both mind and body, and to sustain economic loss, and was otherwise damaged.

36. The aforescribed constitutional violations are all actionable under and pursuant to 42 U.S.C. §§ 1981, 1983, 1985, 1986 and under the laws of New York State.

SECOND CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S RIGHTS UNDER THE
FOURTH, FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES
CONSTITUTION AND NEW YORK STATE LAW PREDICATED UPON THE MALICIOUS
PROSECUTION OF PLAINTIFF

37. Plaintiff repeats and realleges each and every allegation contained herein as if fully set forth at length herein.

38. Upon information and belief, on or about March 20, 2015 and from that time until the dismissal of charges, which was favorable termination for the accused, Defendants deliberately and maliciously prosecuted Plaintiff, an innocent man without any probable cause whatsoever, by filing or causing a criminal complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of falsely accusing the Plaintiff of violations of the criminal laws of the State of New York.

39. The commencement of these criminal proceedings was malicious and began with malice and without probable cause, so that the proceedings could succeed by the Defendants.

40. As a result of the aforementioned actions, including the initiation of the criminal prosecution of Plaintiff without probable cause, Defendants deprived Plaintiff of the rights,

privileges and immunities secured by the Constitution and Laws of the United States of America and the Fourteenth Amendment.

41. As a result of the aforementioned actions, Defendants deprived Plaintiff of the right to be free from unreasonable search and seizures secured by the Constitution and laws of the United States and the Fourth and Fourteenth Amendments.

42. As a result of the aforementioned actions, Defendants deprived Plaintiff of the right to liberty without due process of law secured by the Constitution and Laws of the United States of America and the Fifth and Fourteenth Amendments.

43. The aforementioned conduct by Defendants was motivated and instigated by other than lawful reasons and without probable cause.

44. The aforementioned acts of Defendants were intentional, willful and malicious and performed with reckless disregard for and deliberate indifference to Plaintiff's rights.

45. Plaintiff has suffered humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution.

46. The aforementioned constitutional violations are all actionable under and pursuant to 42 U.S.C. §§ 1981, 1983, 1985, 1986 and under New York State Law.

THIRD CAUSE OF ACTION AGAINST DEFENDANT CITY
MONELL CLAIM PURSUANT TO 42 U.S.C § 1983 AND RESPONDEAT SUPERIOR

47. Plaintiff repeats and realleges each and every allegation contained herein as if fully set forth at length herein.

48. All of the acts and omissions by the individual Defendant, CONCANNON, described above were carried out pursuant to overlapping policies and practices of the CITY which were in existence at the time of the conduct alleged herein and were engaged in with the full knowledge, consent and cooperation and under the supervisory authority of Defendants CITY and the NEW

YORK CITY POLICE DEPARTMENT (NYPD).

49. Defendants CITY and NYPD, by their policy-making agents, servants and employees, authorized sanctioned and/or ratified the individual Defendants' wrongful acts and/or failed to prevent or stop those acts and/or allowed those acts to continue.

50. Defendant CONCANNON arrested, incarcerated and assaulted Plaintiff in the absence of any evidence of criminal wrongdoing, notwithstanding their knowledge that said arrest and incarceration would jeopardize Plaintiff's liberty, well-being, safety and constitutional rights.

51. At all times mentioned herein, said police officer was acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

52. On or about March 20, 2015, Defendants did stop, seize, search, assault and commit a battery and grab the persons of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner.

53. The Plaintiff was falsely arrested, unlawfully imprisoned and maliciously prosecuted without the Defendants' possessing probable cause to do so.

54. The above actions of Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution.

- a. Freedom from assault to his person.
- b. Freedom from battery to his person.
- c. Freedom from illegal search and seizure.
- d. Freedom from false arrest.
- e. Freedom from malicious prosecution.
- f. Freedom from the use of excessive force during the arrest process.
- g. Freedom from unlawful imprisonment.

55. The Defendants subjected Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights.

56. Defendant CITY has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when it's police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based upon probable cause.

57. The direct and proximate results of the Defendants' acts are that Plaintiff suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering to his detriment.

**FOURTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S RIGHTS UNDER THE
FOURTH, FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES
CONSTITUTION AND NEW YORK STATE LAW PREDICATED UPON THE USE OF
EXCESSIVE FORCE UPON PLAINTIFF**

58. Plaintiff repeats and realleges each and every allegation contained herein as if fully set forth at length herein.

59. That on or about March 20, 2015, at approximately 7:30 p.m., Defendant CONCANNON, jointly and severally in his capacity as a police officer, wrongfully entered, stopped, handcuffed and seized the Plaintiff about his person, causing him physical pain and mental suffering. At no time did Defendants have legal cause to enter, stop, handcuff, seize or touch Plaintiff, nor did Plaintiff consent to this illegal touching nor was or privileged by law.

60. As a result of the aforementioned actions, Defendant CONCANNON deprived Plaintiff of the right to be free from the use of excessive force secured by the Constitution and Laws of the United States of America and the Fourth and Fourteenth Amendments.

61. As a result of the aforementioned actions, Defendants deprived Plaintiff of his right against the use of excessive force against their persons secured by the Constitution and Laws of the United States of America and the Fifth and Fourteenth Amendments.

62. The aforementioned acts of Defendants were intentional, willful and malicious and performed with a reckless disregard for and deliberate indifference to Plaintiff's rights.

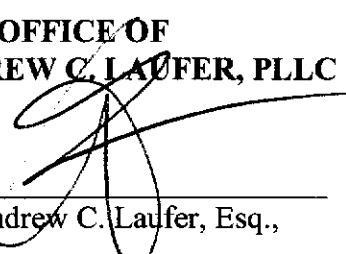
63. That by reason of the false arrest, imprisonment and detention of Plaintiff, Plaintiff was subjected to great indignities, humiliation and ridicule in being so detained, and was greatly injured in his credit and circumstances and was prevented and hindered from performing and transacting his necessary affairs and were caused to suffer much pain in both mind and body, and to sustain economic loss, and was otherwise damaged.

64. The aforedescribed constitutional violations are all actionable under and pursuant to 42 U.S.C. §§ 1981, 1983, 1985, 1986 and under New York State Law.

WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, on all of the foregoing causes of action, in the form of compensatory damages for their pain and suffering, loss of enjoyment of life, and economic loss, in an amount that exceeds the jurisdictional limits of all lower courts that otherwise would have jurisdiction in the matter, and Plaintiff further demands punitive damages on all causes of action, in an amount to be determined by the trier of fact, together with attorney's fees, and together with costs and disbursements.

Dated: New York, New York
September 8, 2015

LAW OFFICE OF
ANDREW C. LAUFER, PLLC


By: Andrew C. Laufer, Esq.,

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Plaintiffs,

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THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, POLICE OFFICER WILLIAM CONCANNON
OF THE 46TH PRECINCT,

-----X
VERIFICATION

Defendants,

-----X

ANDREW C. LAUFER, an attorney duly admitted to practice law in the Courts of New York, affirms the following to be true:

1. That I am a principal of the Law Office of Andrew C. Laufer, PLLC, attorney for the plaintiff in the within action. That I have read the foregoing complaint and know the contents thereof, and that the same are true to my knowledge, except as to the matters herein stated to be alleged upon information and belief, and that as to these matters I believe them to be true.
2. That the sources of my information and knowledge are records and investigation reports maintained within the file.
3. That the reason this verification is made by the affirmant and not by the plaintiff is that the plaintiff does not reside in the County of New York, which is the county wherein this firm maintains its office.

Dated: New York, New York
September 8, 2015

**LAW OFFICE OF
ANDREW C. LAUFER, PLLC**

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